



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 27, 1994

Ms. Joan Kennerly  
Office of the City Attorney  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

OR94-598

Dear Ms. Kennerly:

On behalf of the City of Irving, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 27492. We have received and reviewed your submission of records that you claim to be excepted from required disclosure.

The request at issue is for inspection of "all notes, files, notices and records that were produced by the City of Irving and it's [sic] C.A.T. squad in connection with the recent inspection at 1701 W. Airport Fwy., Irving, (Suites Inn)." You describe the C.A.T. squad and the Suites Inn inspection as follows:

The C.A.T. squad referred to in the requester's letter is the Community Action Team which is comprised of representatives from the Building Inspections Department, the Fire Department, the Health Department, the Police Department and the City Attorney's Office. The City Attorney's Office representative is the prosecutor responsible for city ordinance violation prosecution. The team inspected the Suites Inn on June 14, 1994 to detect and enforce those ordinances that were being violated. The notes that C.A.T. members made during the inspection were used to generate a report whose function is to notify the persons responsible for the violations that the violations exist and to justify a notice and order to vacate and repair or demolish. . . . If the persons responsible for the violations

do not correct them by the respective reinspection dates set out in the inspection report, criminal cases will be filed in Municipal Court and prosecuted.

You claim that all of the handwritten notes of the various inspectors were made for the inspectors' own personal use and thus are not subject to the act as "public information" within the meaning of section 552.021 of the Government Code. From our review it appears that all of the notes relate to official business and are held on behalf of a governmental body and therefore are subject to the act. *See* Open Records Decision Nos. 425 (1985); 142 (1976).

You also claim that all of the requested information is excepted from required public disclosure under the "law enforcement" exception, section 552.108 of the Government Code. Section 552.108 excepts from required disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." You inform us that city ordinance violations are class C misdemeanors and argue that all of the requested records were created

by inspectors, a prosecutor, and a police officer whose job and purpose during the inspection of Suites Inn was detection and investigation of various crimes and to gather evidence for prosecution of those crimes should the persons responsible for the city ordinance violations not correct them in a reasonable period of time.

Your description of the C.A.T. squad indicates that its function in this matter has been essentially regulatory in nature. There is no present intent to initiate a prosecution for any criminal violations, but rather the C.A.T. squad has given the responsible person or persons an opportunity to correct certain city ordinance violations and thereby to avoid prosecution. "[A]n agency whose function is essentially regulatory in nature is not a 'law enforcement agency' for purposes of section [552.108], even though it is charged with the duty of enforcing its own statute." Open Records Decision No. 199 (1978).

Nevertheless, even a non-law enforcement agency may claim the law enforcement exception to deny public access to an active investigatory file if release of the contents of the file "w[ould] unduly interfere with law enforcement and crime prevention," *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). *See* Attorney General Opinion MW-575 (1982). We therefore must consider whether you have shown that public access to the requested records and information would constitute such an interference.

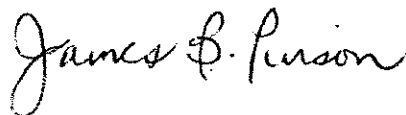
Our review indicates that the inspection report itself and certain letters have been sent to the persons responsible for the alleged violations. Records that a governmental body has voluntarily made available to any member of the public must be made available to any person unless they are confidential or their disclosure is expressly prohibited. Gov't Code § 552.007. In other words, a governmental body waives all discretionary exceptions to disclosure by voluntarily releasing the subject public information to any member of the public. Open Records Decision 490 (1988). Therefore, section 552.108, which is a discretionary exception, Open Records Decision No. 177 (1977), is not available in regard to these or any other documents that already have been voluntarily released to the public.

Furthermore, it appears that most if not all of the information in the computer-generated inspection report you submitted is included in the inspection report you already have released to the public. You have made no showing that there is any significant information in the computer-generated report that has not already been disclosed to a member of the public. Therefore, you have failed to show that release of this report would constitute an undue interference with law enforcement.

Finally, you have stated no reason why release of any of the rest of the submitted records would constitute an undue interference. "Unless the records show on their face that public disclosure would unduly interfere with law enforcement or prosecution, it is necessary to identify the particular records (or parts thereof) which will do so, and the particular explanation applicable to them." Open Records Decision No. 434 (1986) at 3. We find that the records do not show on their face that disclosure would constitute an undue interference with law enforcement.

For the foregoing reasons, none of the submitted records are excepted from required public disclosure. Because case law and prior published open records decisions resolve your request, we are concluding this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "James B. Pinson".

James B. Pinson  
Assistant Attorney General  
Open Government Section

JBP/MAR/rho

Ref.: ID# 27492

Enclosures: Submitted documents

cc: Mr. Mathew M. Lakota  
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(w/o enclosures)